**(2013) 06 SHI CK 0037**

**In the High Court Of Himachal Pradesh**

**Case No :** ITA No. 4003 of 2013

Subhash Chand Sood (HUF) — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

**Date of Decision :** 27-06-2013

**Acts Referred:**

**Citation :** (2013) 06 SHI CK 0037

**Hon'ble Judges :** A.M. Khanwilkar, C.J;Kuldip Singh, J

**Bench :** Division Bench

**Advocate :** Vishal Mohan, for the Appellant; Vinay Kuthiala with Ms. Vandana Kuthiala, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.M. Khanwilkar, C.J.—Heard counsel for the parties. This appeal takes exception to the judgment of the Tribunal, dated 28th January, 2013. The substantial questions of law formulated by the appellant in paragraph 4 are on the assumption that the remuneration received by the coparcener of HUF was in substance one of the modes of return made to the family because of the investment of the family funds.

2. In the facts of the present case, the concurrent finding recorded by the Authorities below is that it cannot be ruled out that the business was carried on without the expertise and personal exertion of the partners. The assessee claims to be partner of 50% and other partner was Ravi Chand Sood having 50% share who was much younger in age to Subhash Chand Sood. On that basis, the Authorities have held that the salary being allowable to a working partner cannot be held to be the salary earned by the assessee (HUF) on account of his capital contribution.

3. This finding of fact will bind the appellant as well as this Court. The decision of the Apex Court pressed into service by the learned counsel for the appellant reported in the case of K.S. Subbiah Pillai Vs. The Commissioner of Income Tax, ,

 

in our opinion, can be used against the appellant himself. The Court has noted that if the remuneration received by the coparcener was in substance one of the modes of return made to the family because of the investment of the family funds in the business, in that case alone it would be the income of the HUF; whereas if it was the compensation given for the services rendered by the individual coparcener, it ought to be reckoned as the income of the individual and not of the HUF. In the circumstances no interference is warranted. Hence dismissed.